

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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DAVID KIRCHER,

Petitioner,

v.

Case No. 12-14477

DEBRA SCUTT,

Respondent.

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**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter is before the court on Petitioner David Kircher's "Motion for reversal based on newly discovered evidence." (Dkt. # 32.)

The magistrate judge issued his report on June 30, 2014, recommending that the court construe the motion as a successive application for a writ of habeas corpus over which the court lacks jurisdiction pursuant to 28 U.S.C. § 2244(b) and transfer the motion to the Sixth Circuit pursuant to 28 U.S.C. § 1631. No objections have been filed pursuant to 28 U.S.C. § 636(b)(1)(C), thus further appeal rights are waived. In addition, the failure to object to the magistrate judge's report releases the court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly,

IT IS ORDERED that the magistrate judge's report and recommendation [Dkt. # 33] is ADOPTED IN FULL AND INCORPORATED BY REFERENCE.

IT IS FURTHER ORDERED that for the reasons set forth in the magistrate judge's report and recommendation, the Petitioner's "Motion for reversal based on newly discovered evidence" is TRANSFERRED to the Sixth Circuit pursuant to § 1631.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: July 23, 2014

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 23, 2014, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522

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